

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

LUEGENE HOLCOMB,

Plaintiff,

v.

Case 2:11-cv-2017-JDT-cgc

**SHELBY COUNTY DIVISION OF
CORRECTIONS, et al.,**

Defendants.

**REPORT AND RECOMMENDATION ON PLAINTIFF’S MOTION FOR DEFAULT
JUDGMENT**

Before the Court is Plaintiff Luegene Holcomb’s Motion for Default Judgment (Docket Entry “D.E.” #69), which was referred to the United States Magistrate Judge (D.E. #70). Plaintiff requests that the Court enter a default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure based upon Defendants’ “failure in complying with a court ordered directive” to produce certain video camera footage that Plaintiff requested during discovery.

As an initial matter, Local Rule 7.2(a)(1)(B) requires that the instant motion be accompanied by a certificate of counsel affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion. Failure to attach an accompanying certificate of consultation may be deemed good grounds for denying the motion. The instant Motion for Default Judgment contains no certificate of consultation stating that Plaintiff attempted to resolve the issue raised in this motion with Defendants before filing the instant motion with the Court. Thus, this failure alone is good

grounds to recommend that Plaintiff's Motion for Default Judgment be denied.

Upon review of the substance of the motion, Plaintiff is mistaken in his allegation that Defendants have failed to comply with a Court order. The Court has never ordered Defendants' to produce the video footage Plaintiff seeks. On the contrary, the Court has considered Plaintiff's Motion to Compel the production of the requested video footage and determined that Defendants are not required to produce it because they have affirmed that no such video footage exists. (D.E. #66). Thus, as Defendants have not failed to "obey an order to provide or permit discovery," there is no basis for a default judgment as a sanction pursuant to Rule 37(b). Additionally, as Defendants have not "failed to plead or otherwise defend" Plaintiff's Complaint, there is no relief available to Plaintiff under Rule 55. Accordingly, the Magistrate Judge recommends to the District Court that Plaintiff's Motion for Default Judgment (D.E. #69) be DENIED.

DATED this 20th day of March, 2013.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.